

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems)

and Their Impact Upon the)

Existing Television Broadcast Service)

MM Docket No. 87-268

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To: The Commission

December 23, 1996

**REPLY COMMENTS OF CURT R. DUNNAM TO BROADCASTERS'
COMMENTS ON THE SIXTH NOTICE OF PROPOSED RULEMAKING**

Final reply comments in the matter of the Commission's Sixth Further Notice of Proposed Rule Making (FCC 96-207, released August 14, 1996: "Sixth NPRM" or "Notice"), are hereby tendered by Curt R. Dunnam, d.b.a. Linear Research Associates ("LINEAR") in response to the Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking¹.

¹ Filed November 22, 1996 on behalf of the Association for Maximum Service Television, Inc. [MSTV].

As previously noted, LINEAR is presently an applicant for NTSC facilities on UHF channel 52, allocated to Ithaca, New York²³. As owner of LINEAR, and, therefore, as a current applicant before the Commission, Mr. Dunnam will be directly affected by the Commission's eventual adoption or rejection of issues considered in this proceeding.

I. INTRODUCTION

LINEAR has reviewed the above cited document and supporting materials. Since this MSTV filing effectively presents a consensus of the existing U.S. broadcast television industry⁴, it is therefore not unreasonable to anticipate that its advice may significantly influence the Commission's decision-making processes. For this reason, and in the interest of brevity, LINEAR has elected to reply directly and solely to certain proposals advanced in the MSTV filing. These proposals, if adopted, would not only damage LINEAR's private interest but might also significantly impact critical public interest aspects of DTV implementation during the so-termed transition period⁵.

All MSTV proposals addressed in this document are presented within Article V, Section A of the above-referenced filing.

² See Comments of Curt R. Dunnam on the Sixth Notice of Proposed Rulemaking, Nov. 22, 1996.

³ Application File Number: BPCT950320KM

⁴ Ref. "Broadcasters' Caucus", Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, Nov. 22, 1996, at p.1, footnote 1.

⁵ Ref. "Fourth Further Notice of Proposed Rule Making and Third Further Notice of Inquiry" (Fourth Further Notice), adopted July 28, 1995.

II. CONCURRING STATEMENT

LINEAR is in agreement with the general thrust of MSTV Article V, as summarized in introductory comments that, during the transition period, "...as much flexibility as possible..." be incorporated into the Commissions' DTV roll-out plan⁶. It is clear to LINEAR that reasonable flexibility in the form of prompt and thorough evaluation of technical circumstances on a case-by-case basis will be necessary to accommodate the significant percentage of new and/or revised NTSC and DTV assignments, allotments and allocations which timely development of the new service is likely to require.

Consequently, and with the limited reservations below, LINEAR strongly supports the MSTV sub-section V.A.1. positions that "...when processing applications to modify NTSC facilities, the commission should determine whether the proposed change will create new interference to the protected contour of *any new DTV channel*" (italics added). And, also that "...The protected contour should be coextensive with the NTSC coverage area of the paired DTV licensee."

Referring to sub-section V.A.2. of the MSTV filing, LINEAR concurs with positions and supporting arguments that the Commission "...should adopt a liberal waiver policy with respect to DTV facility application and construction deadlines", and, also, that DTV stations which may elect to start with less-than-maximum facilities in order to achieve on-

⁶ Id. at p.48

air status in the least possible time "...should receive full contour protection, [same] as all full power stations, from interference from other primary and secondary services."

LINEAR supports the above MSTV proposals to the extent that a.) the Commission should consider prior means of definitively circumscribing NTSC modification requests in a manner which will insure technical conformance with proposed or adopted DTV channel assignment or facility modifications, and b.) that MSTV sub-section V.A.2. para. 2 (p.50) be adopted in slightly modified form to read: "...the Commission should approve any proposed change (whether pre- or post-adoption of a DTV table) that does not cause unaccepted additional interference to assigned NTSC or DTV stations, or to proposed DTV stations."

III. OPPOSING STATEMENT

LINEAR disputes the utility of two proposals and related comments found in sub-section V.A.3. of the MSTV filing [Unassigned DTV Channels and New Allotments]². This passage offers proposals which would, if adopted, compromise the public interest, convenience and necessity of a national DTV implementation plan .

In the opening paragraph of the above-referenced sub-section, the MSTV caucus argues that, "...Given the flux that will characterize the first few years of the transition, Broadcasters propose that the Commission refrain from assigning unassigned DTV

² Id. at p.52

channels (which are mostly in rural areas) or making new allotments throughout the DTV station construction period." A following paragraph continues "...The Commission should take a similar approach to creating new DTV allotments. New allotments should not be considered until the construction period has passed."

LINEAR emphatically disputes the need for any such moratorium on new assignments or allotments during the construction period. It is incumbent upon the Commission to not only insure that DTV facilities are assigned and allocated in a reasonably fair and equitable manner, but to also maximize, insofar as practicable, the diversity of voices heard¹. Assignment of allocated channels to pending applicants and newcomers during the construction period will significantly further that goal, and the public benefit of doing so far outweighs the minor impact on NTSC and DTV "flux". With a similar diversity objective in mind, LINEAR recommends allotment of new channels be considered on a geographical basis initially and on a minimum spacing basis following the transition period.

¹ The Supreme Court has on numerous occasions recognized the distinct connection between diversity of ownership of the mass media and the diversity of ideas and expression required by the First Amendment. See, e.g., *Associated Press v. United States*, 326 U.S. 1, 20, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945); *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390, 89 S.Ct. 1794, 23 L.Ed. 2d 371 (1969).

² "The Commission need not be confined to the technique of exercising regulatory surveillance to assure that licensees will discharge duties imposed on them, perhaps grudgingly and perhaps to the minimum required. It may also seek in the public interest to certify as licensees those who would speak out with fresh voice, would most naturally initiate, encourage and expand diversity of approach and viewpoint." —U.S. App. D.C. at —, 444 F. 2d at 860 (1970).

IV. CONCLUSION

LINEAR agrees with the MSTV signatories' stated view that "...The guiding lights to the development of the nation's free¹⁰ television service have always been more service to more communities by more stations."¹¹ As the Commission assigns DTV channels and protects NTSC service, it should be guided by these same principles."

In the glaring limelight of this noble, self-professed DTV development standard, LINEAR views the MSTV's V.A.3. call for a construction moratorium as curiously inconsistent and possibly anti-competitive.

LINEAR agrees with the majority of MSTV proposals, particularly with respect to maximizing processing flexibility during the transition period. However, LINEAR also respectfully submits to the Commission that, in contrast to the MSTV's moratorium proposal, the greater public interest will be served by permitting ongoing assignment of allocated DTV channels to qualified applicants and by also permitting the allocation of new DTV channels during the initial construction period.

¹⁰ Although LINEAR agrees with the MSTV view expressed here, it objects to the term "free" as somewhat misleading in this context. U.S. domestic broadcast television services presently represent a \$29 billion dollar (annual) industry providing signals available to approximately 100 million households. The indiscriminate goods and services tax assessed on the general public for these signals is therefore approximately \$290 per household per annum. Citizens subject to this indiscriminate tax, which flows directly into the pockets of broadcasters, deserve the benefits of increased competition and, hence, diversity.

¹¹ Id. at p.v (Summary).

Respectfully submitted,

LINEAR RESEARCH ASSOCIATES

A handwritten signature in black ink, appearing to read 'C. R. Dunnam', with a long horizontal line extending to the right.

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